UNITED NATIONS **E**

Economic and Social Council

Distr.
GENERAL

E/CN.7/1998/PC/4/Add.1
20 February 1998

ORIGINAL: ENGLISH

COMMISSION ON NARCOTIC DRUGS ACTING AS PREPARATORY BODY FOR THE SPECIAL SESSION OF THE GENERAL ASSEMBLY DEVOTED TO THE FIGHT AGAINST THE ILLICIT PRODUCTION, SALE, DEMAND, TRAFFIC AND DISTRIBUTION OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES AND RELATED ACTIVITIES
Second session
Vienna, 16-20 March 1998
Item 2 (b) of the provisional agenda*

PREPARATIONS FOR THE SPECIAL SESSION OF THE GENERAL ASSEMBLY TO CONSIDER THE FIGHT AGAINST THE ILLICIT PRODUCTION, SALE, DEMAND, TRAFFIC AND DISTRIBUTION OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES AND RELATED ACTIVITIES AND TO PROPOSE NEW STRATEGIES, METHODS, PRACTICAL ACTIVITIES AND SPECIFIC MEASURES TO STRENGTHEN INTERNATIONAL COOPERATION IN ADDRESSING THE PROBLEM OF DRUG ABUSE AND ILLICIT TRAFFICKING

CONSIDERATION OF THE REPORTS OF THE INFORMAL INTER-SESSIONAL MEETINGS OF THE COMMISSION ACTING AS PREPARATORY BODY FOR THE SPECIAL SESSION OF THE GENERAL ASSEMBLY ON INTERNATIONAL DRUG CONTROL

Measures to promote judicial cooperation

Addendum

*E/CN.7/1998/PC/1.

V.98-51142 (E)

Comments received from Governments

1. The second informal open-ended inter-sessional meeting of the Commission on Narcotic Drugs was held at Vienna from 7 to 9 October 1997. The participants examined the topic of measures to promote judicial cooperation. The consensus reached at the meeting was reflected in a document (E/CN.7/1998/PC/4) that was transmitted to all Governments under cover of a note verbale from the Secretary-General dated 17 December 1997. Governments were invited to provide any comments that they might have had concerning the document, which would be brought to the attention of the second session of the Commission acting as preparatory body for the special session of the General Assembly. Comments were received from the Governments of Canada, Colombia, Costa Rica, Ecuador, Japan, Pakistan, Sweden, Turkey and United States of America. The comments are summarized below. All changes are shown in square brackets. Suggestions for deleting text appear outside the quotation marks. All other changes appear inside the quotation marks.

I. EXTRADITION

Paragraph 1

2. Ecuador noted that, since the Constitution of Ecuador did not permit the extradition of nationals to other countries, the text was not appropriate in its current form.

3. Pakistan recommended that the following text should be added to paragraph 1:

"It is recommended that States should [, consistent with their constitutional principles and the basic provisions of their legal systems]: ..."

Subparagraph 1 (a)

4. Pakistan recommended that the text should be shortened as follows:

"If needed and so far as possible on a periodic basis, review their domestic legislation to simplify procedures for extradition;" [The remaining part of the sentence may be deleted.]

5. Turkey advised that it could not accept the provisions of the subparagraph relating to the review of domestic legislation to simplify procedures for extradition.

Subparagraph 1 (b)

6. Canada noted that there should only be an obligation to provide information when the receiving State required it and that there should not be an obligation to send such materials to all countries. It therefore recommended that subparagraph 1 (b), as well as other paragraphs (specified below), should be amended as follows:

"Inform other States [, where requested,] of the competent authority or authorities designated to receive, respond to and process extradition requests; ..."

Subparagraph 1 (c)

7. Canada recommended that subparagraph 1 (c) should be amended as follows:

"Prepare summaries of their domestic extradition practices [, where requested,] to be made available to other States;"

Subparagraph 1 (d)

8. Colombia noted that States granting extradition that had constitutional safeguards prohibiting the death penalty or life imprisonment and had limited terms of imprisonment might wish to require requesting States to observe the same limits when sentencing extradited offenders.

9. Colombia recommended that priority should be given to establishing, in parallel, mechanisms that both facilitated extradition procedures and promoted prison reform to eliminate overcrowding, as well as non-custodial measures as alternatives to imprisonment. There should also be requirements guaranteeing respect for human rights in accordance with the principle of equality before the law, in order to avoid discrimination on the grounds of race, nationality, ethnic origin, language and the type of offence committed. Colombia noted that, while it was not possible to prove that discrimination had occurred where legal procedures had apparently been observed, in the majority of cases aliens were disadvantaged in foreign legal systems because of their ignorance of the law. Language difficulties were obstacles to obtaining a proper defence. Other obstacles included prejudice on the part of judicial authorities and, in many cases, the indifference of defence lawyers towards aliens. Similarly, that discrimination also occurred in prison centres, since prison authorities discriminated against foreign prisoners, for example, by excluding them from privileges that might be enjoyed by prisoners who were nationals.

10. Furthermore, Colombia recommended that the imposition of sanctions should be considered against States that failed to comply with the requirements under which extradition was granted.

11. Costa Rica suggested the following amendment:

"[With full respect to constitutional norms and domestic law,] consider extraditing their nationals ..." [Deleted the reference to international drug control treaties.]

II. MUTUAL LEGAL ASSISTANCE

Paragraph 2

12. Pakistan recommended that the following text should be added:

"It is recommended that States should [, consistent with their constitutional principles and the basic provisions of their legal systems]: ..."

Subparagraph 2 (a)

13. Japan suggested the addition of the following clause to the end of subparagraph 2 (a):

"... [to the extent consistent with their constitutional principles and the basic concept of their legal system]."

Subparagraph 2 (b)

14. Ecuador suggested that subparagraph 2 (b) should be amended by adding the following text:

"... the name [, address, fax number, telephone number and e-mail address (if any)] of the authority or authorities ..."

Subparagraph 2 (c)

15. Canada proposed amending subparagraph 2 (c) by adding the following text:

"Provide other States [, when requested,] with guides or manuals ..."

Subparagraph 2 (d)

16. Canada suggested changing subparagraph 2 (d) by adding the following text:

"Develop [, where appropriate,] model forms for ..."

Subparagraph 2 (f)

17. The United States recommended the following text to replace subparagraph 2 (f):

"(f) [Maximize the use of modern technologies, such as the Internet and facsimile machines, to expedite and render more efficient urgent requests for assistance, as long as they are secure and reliable]";

New subparagraph 2 (g)

18. Sweden proposed the following new subparagraph 2 (g):

"[(g) Maximize the use of modern technologies for facilitating communications and for the execution of requests for mutual legal assistance, as long as they are secure and consistent with domestic legal systems.]"

19. The United States recommended a new subparagraph 2 (g):

"[(g) Consider the use of video link technology for obtaining witness statements and testimony.]"

III. TRANSFER OF PROCEEDINGS

Paragraph 3

20. Pakistan recommended that the following text should be added:

"It is recommended that States should [, consistent with their constitutional principles and the basic provisions of their legal systems]: ..."

Subparagraph 3 (a)

21. Canada suggested amending subparagraph 3 (a) as follows, to allow for flexibility to accommodate situations where it might not be appropriate to provide information because of, for example, an ongoing case involving the proceeds of crime or a problem with confidentiality:

"[Where required and if appropriate,] make available information ..."

22. Ecuador requested that subparagraph 3 (a) should be amended as follows:

"Make available [appropriate] information ..."

Subparagraph 3 (c)

23. Colombia recommended clarifying whether subparagraph 3 (c) would require States to receive evidence assessed by foreign judges, since in its jurisdiction judges were required by law to assess evidence based on their domestic legislation.

IV. OTHER FORMS OF COOPERATION AND TRAINING

Paragraph 4

24. Pakistan recommended that the following text should be added:

"It is recommended that States should [, consistent with their constitutional principles and the basic provisions of their legal systems]: ..."

Subparagraph 4 (a)

25. Ecuador recommended that subparagraph 4 (a) should be amended as follows:

"... giving special consideration to exchanging experts who can [provide increased insight into and can exchange experiences and techniques relating to the different offences coming within the sphere of drug-trafficking problems between States]";

[Delete the words "assist in such areas as forensic evidence or financial investigations or who can provide specialized insight into the nature of particular drug trafficking organizations that are operating in both the sending State and the receiving State".]

Subparagraph 4 (b)

26. Japan noted that the meaning of the words "ensure that investigative activities in one State complement those undertaken in other States" should be clarified, as well as the meaning of the words "specific projects".

Subparagraph 4 (c)

27. Canada suggested the following changes to allow for the flexibility that might be required in some cases:

"Exchange information [, where requested and appropriate,] developed through forensic analysis, particularly on the basis of scientific profiles of seized drugs ..."

Subparagraph 4 (g)

28. Canada also suggested the addition of the following words:

"Strengthen [, where appropriate,] cooperation ..."

V. CONTROLLED DELIVERY

Paragraph 5

29. Pakistan recommended that the following text should be added:

"It is recommended that States should [, consistent with their constitutional principles and the basic provisions of their legal systems]: ..."

Subparagraph 5 (a)

30. Colombia noted that it did not have domestic legislation enabling it to implement fully, in the framework of international cooperation, controlled delivery or other law enforcement methods such as undercover agents and the exchange of intelligence with other countries on *sub judice* cases, although the matter was currently under review by the Government. That was because there was a legal obligation for authorities to report an offence on pain of their being found guilty of complicity or connivance.

31. The United States noted that the text should not weaken the language of the 1988 Convention but should encourage its implementation. The United States therefore recommended the following changes:

"[Within] the basic principles of their respective domestic legal systems, [ensure that their] legislation, procedures and practices allow for the use of the technique of controlled delivery both at the domestic and at the international level, subject to agreements, arrangements and understandings between States;"

VI. ILLICIT TRAFFIC BY SEA

Paragraph 6

32. Pakistan recommended that the following text should be added:

"It is recommended that States should [, consistent with their constitutional principles and the basic provisions of their legal systems]: ..."

Subparagraph 6 (c)

33. Japan suggested that the following text should be added:

"Promote regional cooperation in maritime drug law enforcement by means of bilateral and regional meetings [including meetings of heads of national drug law enforcement agencies];"

VII. COMPLEMENTARY MEASURES

Paragraph 7

34. Pakistan recommended that the following text should be added:

"It is recommended that States should [, consistent with their constitutional principles and the basic provisions of their legal systems]: ..."

Subparagraph 7 (a)

35. Ecuador suggested that the following change should be made to subparagraph 7 (a):

"The protection of judges, prosecutors [, witnesses and other members of surveillance and law enforcement agencies, whenever the circumstances so warrant,] in cases that involve illicit drug trafficking;"